In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1508

DIANA KEARNY POWELL, PETITIONER

v.

COMMITTEE ON ADMISSIONS AND GRIEVANCES AND JOHN MITCHELL, United States Attorney General

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT JOHN MITCHELL, ATTORNEY GENERAL OF THE UNITED STATES, IN OPPOSITION

Several years ago, petitioner brought an action against the Attorney General of the United States seeking a writ of mandamus directing him to institute criminal proceedings against a national bank and certain individuals who allegedly had embezzled and converted property for the purpose of defeating petitioner's remainder interest under her grandmother's

will. The court of appeals affirmed the dismissal of the action and this Court denied certiorari. *Powell* v. *Katzenbach*, 359 F. 2d 234 (C.A. D.C.), certiorari denied, 384 U.S. 906, rehearing denied, 384 U.S. 967.

Thereafter, invoking Rule 60(b)(2) of the Federal Rules of Civil Procedure, petitioner sought to reopen her complaint on the ground of newly discovered evidence. Petitioner pointed to the substitution of Attorney General Mitchell in place of former Attorney General Katzenbach as defendant and asserted that the Chief Justice of the United States (then a judge of the Court of Appeals for the District of Columbia Circuit), Mr. Justice Marshall and Charles E. Duncan (until recently Corporation Counsel of the District of Columbia) had obtained personal reward for their part in an alleged conspiracy against petitioner. The district court declined to reopen the complaint and the court of appeals summarily affirmed (Pet. App. A-2).

Further review by this Court is not warranted. Leaving aside the inadequacy of petitioner's alleged newly discovered evidence to support her charges of misconduct by public officials, the legal insufficiency of her attempt to compel the Attorney General to institute criminal proceedings remains. As the court of appeals correctly held on petitioner's earlier appeal (359 F. 2d at 234-235), whether and when a criminal prosecution is to be instituted is a matter within the discretion of the Attorney General and mandamus will not lie to control the exercise of this discretion.

The petition should, therefore, be denied.[1]

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

MAY 1970.

[1] Petitioner also seeks review of an entirely independent order of the court of appeals with respect to the disbarment proceedings which were instituted against her (Pet. App. A-1). The federal government was not a party to those proceedings.

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